

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

THOMAS A. SIMONIAN, )  
                          )  
                          )  
Plaintiff,            )  
                          )  
                          )  
v.                     )       No. 10 C 1297  
                          )  
                          )  
MERCK & CO., INC., et al., )  
                          )  
                          )  
Defendants.            )

MEMORANDUM ORDER

On June 25, 2010 counsel for relator plaintiff Thomas Simonian ("Simonian") presented a motion for leave to file a First Amended Complaint ("FAC") in this action that charges false patent marking in violation of 35 U.S.C. §292(a). At that time this Court pointed out a flawed aspect of Simonian's allegations that was highlighted by the recent decision of the Court of Appeals for the Federal Circuit in Pequignot v. Solo Cup Co., 2010 U.S.L.W. 2346649 (Fed. Cir. June 10), so that the proposed FAC needed modification in that respect.

Although Simonian's counsel swiftly (on the same day) provided a revised version of the proposed FAC, that filing made an appropriate change in FAC ¶17 but failed (no doubt inadvertently) to catch the need for a corresponding revision in FAC ¶2. Accordingly Simonian's counsel is ordered to file an amendment to the FAC<sup>1</sup> that revises the third and fourth sentences

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<sup>1</sup> Under the circumstances, there is no need to reinvent the wheel by filing a fully self-contained pleading.

of FAC ¶2 to read:

As alleged in Paragraph 17, Relator believes that Defendant marks the packaging of certain of its pharmaceutical products with the --- Patent with the intent to deceive the public and to gain a competitive advantage in the market.



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Milton I. Shadur  
Senior United States District Judge

Date: June 28, 2010